

APPEAL NO. 170654  
FILED MAY 19, 2017

This appeal after remand arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act).

**STATEMENT OF THE CASE**

A contested case hearing (CCH) was held in this matter on November 8, 2016, in (city), Texas, with (hearing officer) presiding as hearing officer. In a Decision and Order dated November 8, 2016, the hearing officer determined:

- (1) the respondent's (claimant) date of injury is (date of injury);
- (2) the appellant (carrier) is not relieved from liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001;
- (3) the carrier is not relieved from liability under Section 409.004 because of the claimant's failure to timely file a claim for compensation with the Texas Department of Insurance, Division of Workers' Compensation (Division) within one year of the injury as required by Section 409.003;
- (4) the carrier did not waive the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021;
- (5) the claimant did not sustain a compensable repetitive trauma injury;  
and
- (6) the claimant did not have disability from May 1, 2015, and continuing through the date of the CCH.

The claimant appealed the hearing officer's determinations on compensability, date of injury, carrier waiver of the right to contest compensability under Section 409.021, as well as the hearing officer's finding of fact that the work injury was not a producing cause of the claimant's inability to obtain and retain employment at wages equivalent to his pre-injury wage from May 1, 2015, through the date of the CCH. The carrier responded, urging affirmance of the determinations appealed by the claimant. The carrier cross-appealed the hearing officer's determinations on the date of injury, timely notice to the employer, and timely filing a claim with the Division. The appeal file did not contain a response from the claimant to the carrier's cross-appeal.

After review of all determinations appealed, the Appeals Panel remanded the case on February 16, 2017, for further proceedings on the issue of disability. On remand the hearing officer determined that the claimant had disability from (date of injury), and continuing through the date of the November 8, 2016, CCH.

The carrier appealed the hearing officer's decision on remand that the claimant had disability from (date of injury), contending that the evidence does not support that decision. The claimant responded, urging affirmance.

### **DECISION**

We incorporate by reference the determinations in Appeals Panel Decision 162591, decided February 16, 2017, as set forth below:

#### **DATE OF INJURY**

We affirm the hearing officer's determination that the claimant's date of injury is (date of injury).

#### **TIMELY NOTICE TO EMPLOYER**

We affirm the hearing officer's determination that the carrier is not relieved from liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001.

#### **TIMELY FILING CLAIM WITH THE DIVISION**

We affirm the hearing officer's determination that the carrier is not relieved from liability under Section 409.004 because of the claimant's failure to timely file a claim for compensation with the Division within one year of the injury as required by Section 409.003.

#### **WAIVER OF COMPENSABILITY UNDER SECTION 409.021**

We reverse the hearing officer's determination that the carrier did not waive the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021, and we render a new decision that the carrier waived the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021.

#### **COMPENSABLE INJURY**

We reverse the hearing officer's determination that the claimant did not sustain a compensable repetitive trauma injury based on the carrier's waiver of the right to

contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021, and render a new decision that the claimant sustained a compensable repetitive trauma injury based on the carrier's waiver of the right to contest compensability of the claimed injury by not timely contesting the injury in accordance with Section 409.021.

### **DISABILITY**

On remand the hearing officer determined that the claimant had disability from (date of injury), and continuing through the date of the November 8, 2016, CCH. A review of the record in this case established that the hearing officer's determination that the claimant had disability from (date of injury), and continuing through the date of the November 8, 2016, CCH is supported by sufficient evidence and is affirmed.

The true corporate name of the insurance carrier is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
1999 BRYAN STREET, SUITE 900  
DALLAS, TEXAS 75201-3136.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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K. Eugene Kraft  
Appeals Judge

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Margaret L. Turner  
Appeals Judge